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Occupational Disease Act

PENNSYLVANIA
OCCUPATIONAL DISEASE
ACT

EFFECTIVE JULY 1, 1945

ACT OF JUNE 21, 1939

PAMPHLET LAW 566

AS AMENDED

AN ACT

Defining the liability of an employer to pay damages for occupational disease contracted by an employee arising out of and in the course of employment; establishing an elective schedule of compensation; providing procedure for the determination of liability and compensation thereunder; imposing duties on the Department of Labor and Industry, the Workmen's Compensation Board, Workmen's Compensation Referees, and deans of medical schools; creating a medical board to determine controverted medical issues; establishing an Occupational Disease Fund in custody of the State Workmen's Insurance Board; imposing upon the Commonwealth a part of the compensation payable for certain occupational diseases; making an appropriation, and prescribing penalties.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

ARTICLE I

INTERPRETATION AND DEFINITIONS

Section 101. This act shall be called and may be cited as The Pennsylvania Occupational Disease Act. It shall apply to disabilities and deaths caused by occupational disease as defined in this act, resulting from employment within this Commonwealth, irrespective of the place where the contract of hiring was made, renewed, or extended, and shall not apply to any such disabilities and deaths resulting from employment outside of the Commonwealth.

"The Pennsylvania Occupational Disease Act."

General Application.

Section 102. Wherever in this act the singular is used, the plural shall be included; and where the masculine gender is used, the feminine and neuter shall be included.

Singular, Plural

Section 103. The term "employer," as used in this act, is declared to be synonymous with master, and to include natural persons, partnerships, joint-stock companies, corporations for profit, corporations not for profit, municipal corporations, the Commonwealth, and all governmental agencies created by it.

Employer.

Section 104. The term "employee," as used in this act, is declared to be synonymous with servant, and includes all natural persons who perform services, except agricultural* services or domestic services performed in a private home, for another for a valuable consideration, exclusive of persons whose employment is casual in character and not in the regular course of the business of the employer and exclusive of persons to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished, or repaired, or adapted for sale, in the worker's own home,

Employee.

* "Agriculture" in the original.

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or on other premises not under the control or management of the employer.

Independent
contractors

Section 105. The term "contractor," as used in article two, section two hundred and three, and article three, section three hundred and two (b), shall not include a contractor engaged in an independent business, other than that of supplying laborers or assistants, in which he serves persons other than the employer in whose service the disability occurs, but shall include a subcontractor to whom a principal contractor has sublet any part of the work which such principal contractor has undertaken.

Public authority
as defined in
the act

Section 106. The exercise and performance of the powers and duties of a local or other public authority shall, for the purposes of this act, be treated as the trade or business of the authority.

Department

Section 107. The term "department," when used in this act, shall mean the Department of Labor and Industry of this Commonwealth.

Board

The term "board," when used in this act, shall mean The Workmen's Compensation Board of this Commonwealth.

The term "referee," when used in this act, shall mean Workmen's Compensation Referee.

Occupational
diseases

Section 108. The term "occupational disease," as used in this act, shall mean only the following diseases:

(a) Poisoning by arsenic, lead, mercury, or cyanide, or their preparations or compounds, in any occupation involving direct contact with, handling thereof, or exposure thereto.

(b) Poisoning by phosphorus, its preparations or compounds, in any occupation involving direct contact with, handling thereof, or exposure thereto.

(c) Poisoning by methanol, carbon bisulphide, hydrocarbon distillates (naphthas and others), or halogenated hydrocarbons, or any preparations containing these chemicals or any of them, in any occupation involving direct contact with, handling thereof, or exposure thereto.

(d) Poisoning by benzol, or by nitro, amido, or amino derivatives of benzol (dinitro-benzol, anilin, and others), or their preparations or compounds, in any occupation involving direct contact with, handling thereof, or exposure thereto.

(e) Caisson disease (compressed air illness) resulting from engaging in any occupation carried on in compressed air.

(f) Radium poisoning or disability, due to radioactive properties of substances or to Roentgen-ray (X-rays) in any occupation involving direct contact with, handling thereof, or exposure thereto.

(g) Poisoning by, or ulceration from, chromic acid, or bichromate of ammonium, bichromate of potassium, or bichromate of sodium, or their preparations, in any occupation involving direct contact with, handling thereof, or exposure thereto.

(h) Epitheliomatous cancer or ulceration due to tar, pitch, bitumen, mineral oil, or paraffin, or any compound, product or residue of any of these substances, in any occupation involving direct contact with, handling thereof, or exposure thereto.

(i) Infection or inflammation of the skin due to oils, cutting compounds, lubricants, dust, liquids, fumes, gases, or vapor, in any occupation involving direct contact with, handling thereof, or exposure thereto.

(j) Anthrax occurring in any occupation involving the handling of or exposure to wool, hair, bristles, hides, or skins, or bodies of animals either alive or dead.

(k) Silicosis or anthraco-silicosis (commonly known as Miner's Asthma and hereinafter referred to as anthraco-silicosis) in any occupation involving direct contact with, handling of, or exposure to dust of silicon dioxide (SiO_2).

(l) Asbestosis in any occupation involving direct contact with, handling of, or exposure to the dust of asbestos.

ARTICLE II

DAMAGES BY ACTION AT LAW

Section 201. In any action brought to recover damages for disability or death of an employee caused by occupational disease arising out of and in the course of his employment, it shall not be a defense that the occupational disease was caused in whole or in part by the negligence of a fellow employee.

Negligence of
fellow employee
is defense

Section 202. The employer shall be liable for the negligence of employees other than the plaintiff, while acting within the scope of their employment, including engineers, chauffeurs, miners, mine-foremen, fire-bosses, mine superintendents, plumbers, officers of vessels, and all other employees licensed by the Commonwealth or other governmental authority, if the employer be allowed by law the right of free selection of such employees from the class of persons thus licensed; and such employees shall be the agents and representatives of their employers, and their employers shall be responsible for the acts and neglects of such employees, as in the case of other agents and employees of their employers; and, notwithstanding the employment of such employees, the property in and about which they are employed, and the use and operation thereof, shall at all times be under the supervision, management and control of their employers.

Negligence of
an employee not
a barrier

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Hired by
employee, as-
sistant or
contractor, no
barrier.

Section 203. An employer who permits the entry upon premises occupied by him or under his control of a laborer or an assistant hired by an employee or contractor who has rejected article three of this act for the performance upon such premises of a part of the employer's regular business entrusted to such employee or contractor, shall be liable to such laborer or assistant in the same manner and to the same extent as to his own employee.

Agreement
not valid.

Section 204. No agreement, composition, or release of damages made before the date of any disability or death resulting from occupational disease, except the agreement defined in article three of this act, shall be valid or shall bar a claim for damages for such disability or death; and any such agreement other than that defined in article three herein is declared to be against the public policy of this Commonwealth. The receipt of benefits from any association, society, or fund shall not bar the recovery of damages by action at law, nor the recovery of compensation under article three hereof, and any release executed in consideration of such benefits shall be void.

Benefits re-
ceived from
other sources,
no bar.

ARTICLE III ELECTIVE COMPENSATION

Agreement

Section 301. (a) When employer and employee shall by agreement, either express or implied, as hereinafter provided, accept the provisions of article three of this act, compensation for disability or death of such employee, caused by occupational disease arising out of and in the course of his employment, shall be paid by the employer, without regard to negligence, according to the schedule contained in sections three hundred and six and three hundred and seven of this article, but—

Negligence
no bar.

Disability or
death caused
by employee's
violation of
law.

1. No compensation shall be paid when the disability or death is caused by the employee's violation of law but the burden of proof of such fact shall be upon the employer.

Burden of
proof.

Maximum
compensation.

2. The maximum compensation payable under this article for disability and death resulting from silicosis, anthraco-silicosis, or asbestosis shall not exceed the sum of four thousand dollars (\$4000), which shall be full and complete payment for all disability, present or future, or for death from such occupational diseases arising out of employment by any and all employers in this Commonwealth.

Minor
employed.

(b) The right to receive compensation under this act shall not be affected by the fact that a minor is employed or is permitted to be employed in violation of the laws of this Commonwealth relating to the employment of minors, or that he obtained his employment by misrepresenting his age.

(c) Compensation for the occupational diseases enumerated in this act shall be paid only when such occupational disease is peculiar to the occupation or industry in which the employee was engaged, and not common to the general population, and occurring within one year after the date of his last employment in such occupation or industry. Wherever death is mentioned as a cause for compensation under this act, it shall mean only death resulting from occupational disease and occurring within three years after the date of his last employment in such occupation or industry.

Disease peculiar to the occupation or industry.

(d) Compensation for silicosis or anthraco-silicosis, and asbestosis, shall be paid only when it is shown that the employee has had an aggregate employment of at least four years in the Commonwealth of Pennsylvania, during a period of eight years next preceding the date of disability, in an occupation having a silica or asbestos hazard.

In cases of silicosis or anthraco-silicosis, length of employment.

(e) Compensation shall not be payable for partial disability due to silicosis, anthraco-silicosis, or asbestosis. Compensation shall be payable, as otherwise provided in this act, for total disability or death caused solely (as definitely distinguished from a contributory or accelerating cause) by silicosis, anthraco-silicosis, or asbestosis, or by silicosis, anthraco-silicosis, or asbestosis, when accompanied by active pulmonary tuberculosis.

Silicosis, anthraco-silicosis, or asbestosis, total disability or death only.

(f) If it be shown that the employee, at or immediately before the date of disability, was employed in any occupation or industry in which the occupational disease is a hazard, it shall be presumed that the employee's occupational disease arose out of and in the course of his employment, but this presumption shall not be conclusive.

Presumption of disease caused by special hazard of industry.

(g) The employer liable for the compensation provided by this article shall be the employer in whose employment the employee was last exposed to the hazard of the occupational disease claimed, regardless of the length of time of such last exposure: Provided, That when a claimant alleges that disability or death was due to silicosis, anthraco-silicosis, asbestosis or any other occupational disease which developed to the point of disablement only after an exposure of five or more years, the only employer liable shall be the last employer in whose employment the employee was last exposed to the hazard of such occupational disease during a period of six months or more after the effective date of this act; and in such cases an exposure during a period of less than six months after the effective date of this act shall not be deemed an exposure. The notice of disability or death and claim shall be made to the employer who is liable under this subsection, and his insurance carrier, if any.

Which employer liable

Provided

Notice.

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Payments in
 instalments.

(h) Except as hereinafter provided, all compensa-
 tion payable under this article shall be payable in peri-
 odic instalments, as the wages of the employe were pay-
 able before the accident.

Contracts after
 October 1,
 1938.

Section 302. (a) In every contract of hiring made
 after October first, one thousand nine hundred and
 thirty-nine, and in every contract of hiring renewed or
 extended by mutual consent, expressed or implied, after
 said date, it shall be conclusively presumed that the par-
 ties have accepted the provisions of article three of this
 act, and have agreed to be bound thereby, unless the
 employer shall post at his plant, office or place of busi-
 ness a notice of his intention not to pay such compensa-
 tion or unless there be, at the time of the making,
 renewal, or extension of such contract, an express state-
 ment in writing, from either party to the other, that the
 provisions of article three of this act are not intended to
 apply, and unless a true copy of such posted notice or
 such written statement, accompanied by proof of post-
 ing or proof of service thereof upon the other party,
 setting forth under oath or affirmation the time, place,
 and manner of such posting or service, be filed with the
 department within twenty days after such posting or
 service. Every contract of hiring, oral, written, or im-
 plied from circumstances, now in operation, or made or
 implied on or before October first, one thousand nine
 hundred and thirty-nine, shall be conclusively presumed
 to continue subject to the provisions of article three
 hereof, unless the employer shall on or before said date
 either post at his plant, office or place of business a
 notice of his intention not to pay such compensation or
 unless either party shall, on or before said date, in writ-
 ing, have notified the other party to such contract that
 the provisions of article three hereof are not intended
 to apply, and unless there shall be filed with the depart-
 ment a true copy of such notice, together with proof of
 posting or service, within the time and in the manner
 hereinabove prescribed: Provided, however, That the
 provisions of this section shall not be so construed as to
 impair the obligation of any contract now in force.
 Such posted notice shall constitute sufficient notice to
 all employes and to the parents and guardians of all
 minor employes, and a certified copy of proof of posting
 or proof of service shall be prima facie evidence of
 notice. It shall not be lawful for any officer or agent of
 this Commonwealth, or for any county, city, borough,
 town, or township therein, or for any officer or agent
 thereof, or for any other governmental authority cre-
 ated by the laws of this Commonwealth, to give such
 notice of rejection of the provisions of this article to any
 employe of the Commonwealth or of such governmental
 agency.

Presumption of
 acceptance of
 provisions of
 article three of
 act.

In, then of not
 and notice
 thereof

Contracts
 before October
 1, 1938.

Presumed to
 continue under
 article three

Notice.

Proviso.

Commonwealth
 or subdivisions
 not to give
 notice of re-
 jection to
 employes.

(b) After October first, one thousand nine hundred and thirty-nine, an employer who permits the entry, upon premises occupied by him or under his control, of a laborer or an assistant hired by an employee or contractor, for the performance upon such premises of a part of the employer's regular business entrusted to that employee or contractor, shall be conclusively presumed to have agreed to pay to such laborer or assistant compensation in accordance with the provisions of article three, unless the employer shall post at his plant, office or place of business a notice of his intention not to pay such compensation, and unless there be filed with the department within twenty days thereafter, a true copy of such notice, together with proof of the posting of the same, setting forth upon oath or affirmation the time, place, and manner of such posting; and after October first, one thousand nine hundred and thirty-nine, any such laborer or assistant who shall enter upon premises occupied by or under control of such employer, for the purpose of doing such work, shall be conclusively presumed to have agreed to accept the compensation provided in article three, in lieu of his right of action under article two, unless he shall have given notice in writing to the employer, at the time of entering upon such employer's premises for the purpose of doing his work, of his intention not to accept such compensation, and unless within twenty days thereafter there shall have been filed with the department a true copy of such notice, accompanied by proof of service thereof upon such employer, setting forth under oath or affirmation the time, place, and manner of such service. And in such cases where article three binds such employer and such laborer or assistant, it shall not be in effect between the intermediate employer or contractor and such laborer or assistant, unless otherwise expressly agreed.

(c) Any notice given hereunder by an employer to his employees need not be addressed to each employee individually, but may be addressed to all employees. Proof of service of any number of statements or notices may be made in one affidavit, but such affidavit shall state the time and place of each service.

Section 303. Such agreement shall constitute an acceptance of all the provisions of article three of this act, and shall operate as a surrender by the parties thereto of their rights to any form or amount of compensation or damages for any disability or death resulting from occupational disease, or to any method of determination thereof, other than as provided in article three of this act. Such agreement shall bind the employer and his personal representatives, and the employee, his or her wife, or husband, widow or widower, next of kin, and other dependents.

After October
1, 1939

Liable to as-
sistant hired
by an employee
or contractor
on premises

Unless notice
posted, etc.

After October
1, 1939

Presumption of
acceptance of
article three
by laborer or
assistant.

Unless notice
given, etc.

Intermediate
employer or
contractor not
liable, unless
agreed other-
wise.

Notices by em-
ployer to em-
ployees need not
be individual.

Acceptance

Persons bound.

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Termination of agreement as to operation or non-operation of article three.	Section 304. Any agreement between employer and employe for the operation or non-operation of the provisions of article three of this act may be determined by the posting of notice by the employer or by either party upon thirty days' notice to the other in writing, if a copy of such notice, with proof of posting or proof of service, be filed in the department as provided in section three hundred and two of this article.
Employer to insure.	Section 305. Every employer liable under this act to pay compensation shall insure the payment of compensation in the State Workmen's Insurance Fund, or in any insurance company, or mutual association or company, authorized to insure such liability in this Commonwealth, unless such employer shall be exempted by the department from such insurance. An employer desiring to be exempt from insuring the whole or any part of his liability for compensation shall make application to the department, showing his financial ability to pay such compensation, whereupon the department, if the applicant establishes his financial ability, shall issue to the applicant a permit authorizing such exemption. From a refusal of the department to issue such permit, an appeal shall lie to the court of common pleas of Dauphin County. In any such appeal, the only question shall be whether the department abused its discretion in refusing such permit. The department shall establish a period of twelve calendar months, to begin and end at such times as the department shall prescribe, which shall be known as the annual exemption period. Unless previously revoked, all permits issued under this section shall expire and terminate on the last day of the annual exemption period for which they were issued. Permits issued under this act shall be renewed upon the filing of an application. The department may, from time to time, require further statements of the financial ability of such employer, and, if at any time such employer appear no longer able to pay compensation, shall revoke its permit granting exemption, in which case the employer shall immediately subscribe to the State Workmen's Insurance Fund or insure his liability in any insurance company or mutual association or company, as aforesaid.
Self insurance.	
Permit.	
Appeal on refusal.	
Annual exemption period.	
Renewal.	
Revocation.	
Effect.	
Failure of employer to comply.	
Penalty.	
Enforcement.	

investigate all violations that are brought to its notice and shall institute prosecutions for violations thereof. All fines recovered under the provisions of this section shall be paid by the clerk of the court to the department and by it paid into the State Treasury.

Section 306. The following schedule of compensation is hereby established for total disability resulting from occupational disease, subject to the limitations of section 301:

(a) For the first five hundred weeks after the seventh day of total disability sixty-six and two-thirds per centum of the wages of the disabled employe as defined in section three hundred and nine; but the compensation shall not be more than twenty dollars per week nor less than ten dollars per week, and shall not exceed in the aggregate the sum of ten thousand dollars: Provided, That if at the date when disability begins, the employe receives wages of less than ten dollars per week, then he shall receive the full amount of such wages per week as compensation, but in no event less than five dollars per week. Nothing in this clause shall require payment of compensation after disability shall cease. Should partial disability be followed by total disability, the period of five hundred weeks mentioned in this clause of this section shall be reduced by the number of weeks during which compensation was paid for such partial disability.

(b) For disability partial in character (except the particular cases mentioned in clause (c)) sixty-six and two-thirds per centum of the difference between the wages of the disabled employe, as defined in section three hundred and nine, and the earning power of the employe thereafter; but such compensation shall not be more than seventeen dollars per week. This compensation shall be paid during the period of such partial disability, not, however, beyond three hundred weeks after the seventh day of disability. Should total disability be followed by partial disability, the period of three hundred weeks mentioned in this clause shall be reduced by the number of weeks during which compensation was paid for total disability. The term "earning power," as used in this section, shall in no case be less than the weekly amount which the employe receives after disability begins.

(c) For all disability resulting from loss or loss of the use of members resulting from occupational disease, the compensation shall be exclusively as follows:

For the loss of a hand, sixty-six and two-thirds per centum of wages during one hundred and seventy-five weeks.

For the loss of a forearm, sixty-six and two-thirds per centum of wages during one hundred and ninety-five weeks.

Disposition of
fines

Schedule of
compensation.

Total
disability

Total disability
following partial
disability.

Partial
disability.

Partial disability
following
total disability.

"Earning
power."

Schedule for
loss or loss of
use of members
through
occupational
disease.